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9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**

12 In the Matter of the Accusation Against:

Case No. 2008-78

13 LOURDES I. PEREZ
216 W. Imperial Ave., Apt. 14
El Segundo, CA 90245

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

14 Respondent.
15

16 FINDINGS OF FACT

17 1. On or about September 5, 2007, Complainant Ruth Ann Terry, M.P.H.,
18 R.N, in her official capacity as the Executive Officer of the Board of Registered Nursing, filed
19 Accusation No. 2008-78 against Lourdes I. Perez (Respondent) before the Board.

20 2. On or about August 31, 1983, the Board issued Registered Nurse License
21 Number 364214 to Respondent. Said license expires on September 30, 2009, unless renewed.

22 3. On or about October 2, 2007, Jennifer Familo, an employee of the
23 Department of Justice, served by Certified Mail a copy of the Accusation No. 2008-78 to
24 Respondent's address of record with the Board, which was and is 216 W. Imperial Ave., Apt. 14
25 El Segundo, CA 90245. A copy of the Accusation is exhibit A, and is incorporated herein by
26 reference.

27 4. Service of the Accusation was effective as a matter of law under the
28 provisions of Government Code section 11505, subdivision (c).

1 5. On or about October 12, 2007, the aforementioned documents were
2 returned by the U.S. Postal Service marked as having been received at respondent's address of
3 record.

4 6. Government Code section 11506 states, in pertinent part:

5 (c) The respondent shall be entitled to a hearing on the merits if the
6 respondent files a notice of defense, and the notice shall be deemed a specific
7 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

8 7. Respondent failed to file a Notice of Defense within 15 days after service
9 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
10 Accusation No. 2008-78.

11 8. California Government Code section 11520 states, in pertinent part:

12 (a) If the respondent either fails to file a notice of defense or to appear at
13 the hearing, the agency may take action based upon the respondent's express
14 admissions or upon other evidence and affidavits may be used as evidence without
any notice to respondent.

15 9. Pursuant to its authority under Government Code section 11520, the Board
16 finds Respondent is in default. The Board will take action without further hearing and, based on
17 Respondent's express admissions by way of default and finds that the allegations in Accusation
18 2008-78 are true.

19 10. The total costs for investigation and enforcement are \$1,461.50 as of
20 December 13, 2007.

21 DETERMINATION OF ISSUES

22 1. Based on the foregoing findings of fact, Respondent Lourdes I. Perez has
23 subjected her Registered Nurse License No. 364214 to discipline.

24 2. The agency has jurisdiction to adjudicate this case by default.

25 3. The Board is authorized to revoke Respondent's Registered Nurse License
26 based upon the following violations alleged in the Accusation:

27 ///

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1 a. Prior to 2003, respondent owned California's two largest home
2 health care businesses. She was the subject of a criminal investigation that led to her pleading
3 guilty to health care fraud that cost Medicare \$40 million dollars. On or about October 23, 2004,
4 in the United States District Court, Central District, in a case entitled *United States v. Seal A.,*
5 *aka Lourdes Perez*, in Case No. 2-CR 04-01155, respondent pled guilty to violations of U.S.C.
6 18, section 1347, Health Care Fraud, and U.S.C. 26, section 7206(1), Subscribing to False Tax
7 Returns. She was sentenced to a prison commitment for forty-six (46) months, payment of
8 restitution in the amount of \$6,127,374.00, as well as other terms and conditions of probation.

9 b. Respondent's license is subject to discipline for unprofessional conduct
10 under sections 490 and 2761 (a) and (f) of the Code, in that she sustained a conviction of a felony
11 substantially related to the qualifications, functions, and duties of a registered nurse.

12 c. Respondent's license is subject to discipline under section 810 of the
13 Code in that she sustained a conviction of a felony involving knowingly presenting or causing to
14 be presented false or fraudulent claims for the payment of a loss under a contract of insurance, or
15 knowingly preparing, making or subscribing a writing, with the intent to present or use the same,
16 or to allow it to be presented or used in support of a false or fraudulent claim.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED February 27, 2008.

LaTramone W Tate

Attachment: Exhibit A Accusation No. 2008-78

Exhibit A
Accusation No. 2008-78

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2008-78

13 LOURDES I. PEREZ
216 W. Imperial Ave., Apt. 14
14 El Segundo, CA 90245

A C C U S A T I O N

15 Registered Nurse No. 364214

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

- 20 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Accusation solely
21 in her official capacity as the Executive Officer of the Board of Registered Nursing.
22 2. On or about August 31, 1983, the Board issued Registered Nurse License
23 Number 364214 to Lourdes I. Perez (Respondent). Said license will expire on September 30,
24 2007, unless renewed.

25 JURISDICTION

- 26 3. This Accusation is brought before the Board, under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

1 4. Section 490 of the Code states:

2 A board may suspend or revoke a license on the ground that the licensee
3 has been convicted of a crime, if the crime is substantially related to the
4 qualifications, functions, or duties of the business or profession for which the
5 license was issued. A conviction within the meaning of this section means a plea
6 or verdict of guilty or a conviction following a plea of nolo contendere. Any
7 action which a board is permitted to take following the establishment of a
8 conviction may be taken when the time for appeal has elapsed, or the judgment of
9 conviction has been affirmed on appeal, or when an order granting probation is
10 made suspending the imposition of sentence, irrespective of a subsequent order
11 under the provisions of Section 1203.4 of the Penal Code.

12 5. Section 493 of the Code states:

13 Notwithstanding any other provision of law, in a proceeding conducted by
14 a board within the department pursuant to law to deny an application for a license
15 or to suspend or revoke a license or otherwise take disciplinary action against a
16 person who holds a license, upon the ground that the applicant or the licensee has
17 been convicted of a crime substantially related to the qualifications, functions, and
18 duties of the licensee in question, the record of conviction of the crime shall be
19 conclusive evidence of the fact that the conviction occurred, but only of that fact,
20 and the board may inquire into the circumstances surrounding the commission of
21 the crime in order to fix the degree of discipline or to determine if the conviction
22 is substantially related to the qualifications, functions, and duties of the licensee in
23 question.

24 As used in this section, 'license' includes 'certificate,' 'permit,'
25 'authority,' and 'registration.'

26 6. Section 482 of the Code states:

27 Each board under the provisions of this code shall develop criteria to
28 evaluate the rehabilitation of a person when: . . . (b) Considering suspension or
29 revocation of a license under Section 490.

30 Each board shall take into account all competent evidence of rehabilitation
31 furnished by the applicant or licensee.

32 7. Section 2750 of the Business and Professions Code ("Code") provides, in
33 pertinent part, that the Board may discipline any licensee, including a licensee holding a
34 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
35 2750) of the Nursing Practice Act.

36 8. Section 2761 of the Code states:

37 The board may take disciplinary action against a certified or licensed nurse
38 or deny an application for a certificate or license for any of the following:

1 (a) Unprofessional conduct, which includes, but is not limited to, the
2 following:

3

4 (f) Conviction of a felony or of any offense substantially related to the
5 qualifications, functions, and duties of a registered nurse, in which event the
6 record of the conviction shall be conclusive evidence thereof.

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8 9. Section 810 of the Code states:

9 (a) It shall constitute unprofessional conduct and grounds for disciplinary
10 action, including suspension or revocation of a license or certificate, for a health
11 care professional to do any of the following in connection with his or her
12 professional activities:

13 (1) Knowingly present or cause to be presented any false or
14 fraudulent claim for the payment of a loss under a contract of
15 insurance.

16 (2) Knowingly prepare, make, or subscribe any writing,
17 with intent to present or use the same, or to allow it to be presented
18 or used in support of any false or fraudulent claim.

19 (b) It shall constitute cause for revocation or suspension of a license or
20 certificate for a health care professional to engage in any conduct prohibited under
21 Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

22

23 10. California Code of Regulations, title 16, section 1444, states:

24 A conviction or act shall be considered to be substantially related to the
25 qualifications, functions or duties of a registered nurse if to a substantial degree it
26 evidences the present or potential unfitness of a registered nurse to practice in a
27 manner consistent with the public health, safety, or welfare. Such convictions or
28 acts shall include but not be limited to the following:

....

(c) Theft, dishonesty, fraud, or deceit.

11. California Code of Regulations, title 16, section 1445, states:

(b) When considering the suspension or revocation of a license on the
grounds that a registered nurse has been convicted of a crime, the board, in
evaluating the rehabilitation of such person and his/her eligibility for a license will
consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

1 (2) Total criminal record.

2 (3) The time that has elapsed since commission of
3 the act(s) or offense(s).

4 (4) Whether the licensee has complied with any terms of
5 parole, probation, restitution or any other sanctions lawfully
6 imposed against the licensee.

7 (5) If applicable, evidence of expungement proceedings
8 pursuant to Section 1203.4 of the Penal Code.

9 (6) Evidence, if any, of rehabilitation submitted by the
10 licensee.

11 12. Section 2764 of the Code provides, in pertinent part, that the expiration of
12 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
13 against the licensee or to render a decision imposing discipline on the license.

14 13. Section 118, subdivision (b), of the Code provides that the
15 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
16 action during the period within which the license may be renewed, restored, reissued or
17 reinstated.

18 14 Section 125.3 of the Code provides, in pertinent part, that the Board may
19 request the administrative law judge to direct a licensee found to have committed a violation or
20 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
21 and enforcement of the case.

22 FIRST CAUSE FOR DISCIPLINE

23 (October 23, 2004 Criminal Conviction for Health Care Fraud)

24 15. Respondent is subject to disciplinary action under sections 490 and 2761
25 (a) and (f) of the Code, in that she sustained a conviction of a felony substantially related to the
26 qualifications, functions, and duties of a registered nurse. On or about October 23, 2004, in the
27 United States District Court, Central District, in a case entitled *United States v. Seal A., aka*
28 *Lourdes Perez*, in Case No. 2-CR 04-01155, respondent pled guilty to violations of U.S.C. 18,
section 1347, Health Care Fraud, and U.S.C. 26, section 7206(1), Subscribing to False Tax
Returns.

1 16. On October 16, 2006, respondent was sentenced on both counts to the
2 following:

- 3 a. Commitment to the Bureau of Prisons for a term of
4 forty-six (46) months;
5 b. Supervised release for a term of four years;
6 c. Compliance with the rules and regulations of the U.S.
7 Probation Office and General Order 318;
8 d. Payment of a special assessment fee of \$800.00;
9 e. Payment of restitution in the amount of \$6,127,374.00;

10 and

- 11 f. Surrender to the Bureau of Prisons by December 1, 2006.

12 17. As reported in the Associated Press, respondent, the owner of California's
13 two largest home health care businesses, plead guilty to health care fraud that cost Medicare \$40
14 million dollars. She was investigated after a payroll clerk at one of the home health care
15 businesses filed a whistle blower lawsuit in 2003.

16 18. Respondent has reimbursed the government \$33.9 million dollars.

17 SECOND CAUSE FOR DISCIPLINE

18 (Insurance Fraud)

19 19. Respondent is subject to disciplinary action under section 810 of the Code
20 in that she sustained a conviction of a felony involving knowingly presenting or causing to be
21 presented false or fraudulent claims for the payment of a loss under a contract of insurance, or
22 knowingly preparing, making or subscribing a writing, with the intent to present or use the same,
23 or to allow it to be presented or used in support of a false or fraudulent claim, as more
24 particularly set forth above in paragraphs 15-18.

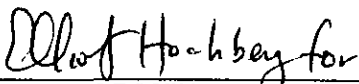
25 PRAYER

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein
27 alleged, and that following the hearing, the Board issue a decision:

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- 1 1. Revoking or suspending Registered Nurse License Number 364214, issued
- 2 to Lourdes I. Perez;
- 3 2. Ordering Lourdes I. Perez to pay the Board the reasonable costs of the
- 4 investigation and enforcement of this case, pursuant to Business and Professions Code section
- 5 125.3; and
- 6 3. Taking such other and further action as deemed necessary and proper.
- 7

8 DATED: 9/5/07

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12 
13 RUTH ANN TERRY, M.P.H, R.N
14 Executive Officer
15 Board of Registered Nursing
16 State of California
17 Complainant

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